

any disagreement arise, either party could request the Commission's assistance. Although we do not propose here to mandate any particular type of cooperative interference mitigation measures, we seek comment on whether there are specific actions we could take (including but not limited to imposing particular obligations in our rules) to facilitate such collaboration. Commenters may consider, for example, whether the Coast Guard and MariTEL should negotiate regarding a coordination agreement or similar arrangement to mitigate interference.

50. We note that commenters besides MariTEL have contended that MariTEL should be compensated in some manner if Channels 87B and 88B are designated for AIS.¹⁹⁷ While we have tentatively concluded otherwise for the reasons explained above, interested parties who continue to believe that MariTEL should be compensated in some way should explain in detail why that is so. Proponents of compensation should also identify appropriate compensation and discuss whether the Commission has legal authority to provide that compensation.

C. MariTEL Proposals

51. We also tentatively conclude that it would not serve the public interest to adopt the *MariTEL Frequency Coordinator Proposal* or the *MariTEL Sharing Proposal*. We discern little concrete benefit from either proposal beyond providing a resolution of this controversy that is acceptable to MariTEL by offering a potential revenue stream. As discussed below, there are significant problems with each proposal that, we believe, outweigh any benefits.

1. Frequency Coordinator Proposal

52. With respect to the *MariTEL Frequency Coordinator Proposal*, commenters assert that the service MariTEL proposes to provide is not frequency coordination¹⁹⁸ and that there is no need for AIS frequency coordination.¹⁹⁹ Commenters note, moreover, that where frequency coordination is required, the Commission generally favors competition among frequency coordinators, rather than giving a single coordinator exclusivity, as MariTEL proposes.²⁰⁰ Commenters also complain that MariTEL, unlike the Part 90 frequency coordinators, would not be representative of the user community,²⁰¹ and some commenters question MariTEL's qualifications to serve as AIS frequency coordinator.²⁰² In response,

¹⁹⁷ See Port of New York/New Jersey Comments re Sharing Proposal at 1; United Sandy Hook Pilots Comments re Sharing Proposal at 1; Shine Micro Comments re Coordination Proposal at 2; cf. MMC Comments at 4 (arguing that the best solution would be for the FCC to revoke MariTEL's license for Channel 87B and offer MariTEL another marine mobile channel to replace it, if one is available, or, alternatively, "the FCC could buy back Channel 87B from MariTEL for current market value.")

¹⁹⁸ See Ingram Barge Comments re Coordination Proposal at 3-4; Tidewater Marine Comments re Coordination Proposal at 1.

¹⁹⁹ See Ingram Barge Comments re Coordination Proposal at 3-4; RTCM Comments re Coordination Proposal at 2-3; Shine Micro Comments re Coordination Proposal at 1; Nauticast Comments re Coordination Proposal at 4; Furuno U.S.A. Comments re Coordination Proposal at 1; NTIA Comments re Coordination Proposal at 2; DOT/SLSDC Comments re Coordination Proposal at 4-5. (The DOT/SLSDC Comments re Coordination Proposal were submitted to NTIA, and then submitted to the Commission as an attachment to NTIA's Comments re Sharing Proposal.)

²⁰⁰ See Ingram Barge Comments re Coordination Proposal at 5; NTIA Comments re Coordination Proposal at 2; see also BoatUS Comments re Coordination Proposal at 1 (suggesting that if there is a need for a single AIS frequency coordinator, the selection of that coordinator should be subject to the federal bidding and procurement process).

²⁰¹ See Ingram Barge Comments re Coordination Proposal at 4; Task Force Comments re Coordination Proposal at 2.

²⁰² See BoatUS Comments re Coordination Proposal at 2; Sea Tow Comments re Coordination Proposal at 1; Task Force Comments re Coordination Proposal at 2; Ingram Barge Comments re Coordination Proposal at 4; USCG

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MariTEL says that those commenters who contend that MariTEL would not be acting like other frequency coordinators previously recognized by the Commission focus too narrowly on the traditional role of frequency coordination.²⁰³ In addition, other commenters support MariTEL's proposal to serve as AIS frequency coordinator, stating that MariTEL is uniquely qualified to serve in that role and that implementing the proposal will facilitate adoption of AIS by non-mandatory vessels and expand the utility of AIS to all maritime stakeholders.²⁰⁴

53. We agree with the commenters who contend that frequency coordination, in the traditional sense, is not required for AIS. If Channels 87B and 88B are designated for AIS, as is a premise of the *MariTEL Frequency Coordinator Proposal*, there is no need for a frequency coordinator to undertake an analysis of predicted interference in order to select a "best" frequency for the proposed operation. However, we do not believe that should be the end of the discussion. If the *MariTEL Frequency Coordinator Proposal* would provide a significant benefit to AIS users that would outweigh any detrimental effects, it would deserve further consideration. However, we are not convinced, on balance, that the benefits to be derived from adopting the *MariTEL Frequency Coordinator Proposal* outweigh the potential negative consequences for AIS deployment stemming from MariTEL's proposed fees. The benefits are not clearly described,²⁰⁵ and appear to be geared toward MariTEL's particular interests as a VPC licensee. MariTEL says in its reply comments to the *Coordinator Proposal PN* that AIS frequency coordination is indeed needed, for two reasons; first, it is needed to ensure that use of Channels 87B and 88B for AIS does not negatively affect MariTEL's use of not only those channels but also adjacent channels, and second, it is necessary for shared use of the channels by the Federal Government and by MariTEL and other non-Federal Government users.²⁰⁶ After review of the record on this issue, we tentatively conclude that private sector frequency coordination is not essential for the effective operation of AIS in the United States, and that the benefits to be derived from adoption of the *MariTEL Frequency Coordinator Proposal* are at best slight and in any event clearly outweighed by the attendant costs.

54. Many commenters view MariTEL's proposed frequency coordination fees as an unnecessary and unreasonable "toll booth" or "tax" that would be imposed on AIS users for the sole or primary purpose of enabling MariTEL to recoup its investment in VPC spectrum and facilities.²⁰⁷ Commenters

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Comments re Coordination Proposal at 4. (The USCG Comments re Coordination Proposal were submitted to NTIA, and then submitted by NTIA as an attachment to NTIA's Comments re Coordination Proposal.)

²⁰³ See MariTEL Reply Comments re Coordination Proposal at 10. MariTEL also notes that while traditional frequency coordinators may operate on a non-profit basis, traditional frequency coordinators, unlike MariTEL, are not licensees with a legitimate expectation of being able to profit from use of the licensed spectrum. *Id.* at 11. MariTEL also disputes that all frequency coordinators are representative of the industries they serve and provide service on a not-for-profit basis. *Id.* at 11-12.

²⁰⁴ See Mississippi DPSC Comments re Coordination Proposal at 2-3; Harris Corp. Comments re Coordination Proposal at 1; see also Tittle Comments re Coordination Proposal at 2 (stating that MariTEL should be permitted to serve as AIS Frequency Coordinator provided that MariTEL makes frequency recommendations that take into account and protect the operations of all existing site-based VPC stations, and not simply protect MariTEL's stations).

²⁰⁵ See, e.g., RTCM Comments re Coordination Proposal at 3 (asserting that it is not clear how MariTEL's proposed database would provide the Coast Guard or the Commission with information that is not already available through existing MMSI databases); Furuno U.S.A. Comments re Coordination Proposal at 1 (arguing that the services MariTEL proposes to provide appear to be available already at far less cost than MariTEL proposes). MariTEL of course may provide additional clarification on this point in its comments to this Notice of Proposed Rule Making.

²⁰⁶ See MariTEL Reply Comments re Coordination Proposal at 5-7.

²⁰⁷ See Ingram Barge Comments re Coordination Proposal at 1-2, 7-8; BoatUS Comments re Coordination Proposal at 1; Tidewater Marine Comments re Coordination Proposal at 1; Shine Micro Comments re Coordination Proposal at 2; Nauticast Comments re Coordination Proposal at 3-4; Task Force Comments re Coordination Proposal at 2;

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state that the proposed initial fees are unreasonably high.²⁰⁸ MariTEL says that it agrees that its fees should be determined ultimately by “market pressures,”²⁰⁹ and that it is not wedded to its initially proposed charges and is willing to provide a justification to the Commission for any charges it intends to impose.²¹⁰ Nonetheless, we share the concerns of commenters over the fees MariTEL seeks to impose. We are puzzled as to how MariTEL expects the discipline of the marketplace to constrain its pricing policy if it is allowed to have a monopoly over AIS frequency coordination services, as it proposes.²¹¹ In addition, we do not believe the possibility of Commission oversight of MariTEL’s pricing provides a satisfactory solution to these concerns. Such oversight would be administratively burdensome,²¹² there would not be a clear benchmark for assessing the reasonableness of MariTEL’s proposed rates, and it remains that MariTEL proposes to impose fees that would not only recover its costs in providing frequency coordination services, but that would include a significant profit component as well.²¹³

55. We tentatively agree with the many commenters who contend that MariTEL’s proposed fees would create an unwarranted disincentive for voluntary carriage of AIS equipment.²¹⁴ The effectiveness of AIS as a tool in service of maritime safety and homeland security is directly proportional to the percentage of vessels that operate with AIS. Creating a disincentive for voluntary AIS carriage should be considered only if there are equally weighty reasons in favor of it. Here, as we have discussed, we see no countervailing public interest benefit in MariTEL’s proposal to act as AIS frequency coordinator that could justify a measure that would discourage fitting vessels with AIS equipment. In addition, we agree

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Ingram Barge Reply Comments re Coordination Proposal at 3-4; USCG Comments re Coordination Proposal at 1-2; DOT/SLSDC Comments re Coordination Proposal at 6-7. (The USCG Comments re Coordination Proposal and the DOT/SLSDC Comments re Coordination Proposal were submitted to NTIA, and then submitted to the Commission as attachments to the NTIA Comments re Coordination Proposal.)

²⁰⁸ See Task Force Comments re Coordination Proposal at 2; Ingram Barge Comments re Coordination Proposal at 6; Tidewater Marine Comments re Coordination Proposal at 1. Several commenters indicate that they find it particularly egregious that MariTEL proposes to charge fees for issuing MMSI numbers, when BoatUS and Sea Tow currently issue MMSIs free of charge. See Ingram Barge Comments re Coordination Proposal at 6; Shine Micro Comments re Coordination Proposal at 2. In addition, the Coast Guard points out that MariTEL intends to charge Federal Government vessels as well as private vessels for MMSIs that they can now acquire free of charge. USCG Comments re Coordination Proposal at 4. DOT/SLSDC adds that “[t]here is no justification for allowing MariTEL to charge a fee for an MMSI for which MariTEL has incurred no processing or application costs.” DOT/SLSDC Comments re Coordination Proposal at 6. In its Reply Comments, however, MariTEL clarifies that it is not essential to its proposal that it be the exclusive registrar of MMSIs. MariTEL Reply Comments re Coordination Proposal at 13.

²⁰⁹ See MariTEL Comments at 5.

²¹⁰ See MariTEL Reply Comments re Coordination Proposal at 12.

²¹¹ See Ingram Barge Reply Comments re Coordination Proposal at 2 n.5, 5-6; BoatUS Comments re Coordination Proposal at 1-2.

²¹² Accord Ingram Barge Comments re Coordination Proposal at 6. Commenters also point to other potential difficulties, apart from the need to police MariTEL’s prices. For example, it is unclear how a failure to pay a fee would be enforced or by whom. See, e.g., Ingram Barge Comments re Coordination Proposal at 6.

²¹³ See MariTEL Reply Comments re Coordination Proposal at 2-3 (stating that MariTEL’s imposition of charges for the use of Channels 87B and 88B and to coordinate those channels is consistent with its status as a CMRS provider, and if it were not allowed to impose such charges it would be receiving disparate treatment from similarly situated licensees).

²¹⁴ See BoatUS Comments re Coordination Proposal at 2; Tidewater Marine Comments re Coordination Proposal at 1; Shine Micro Comments re Coordination Proposal at 2; Nauticast Comments re Coordination Proposal at 4-5; Furuno U.S.A. Comments re Coordination Proposal at 1; USCG Comments re Coordination Proposal at 4; DOT/SLSDC Comments re Coordination Proposal at 6; cf. LMRWSAC Comments re Sharing Proposal at 2.

that the proposed fees would unfairly burden the owners and operators of vessels subject to mandatory AIS carriage requirements, who must already shoulder the costs of purchasing and installing AIS equipment to fulfill the requirement.²¹⁵ Having been required to bear this expense in order to comply with a Federal agency's requirement, these vessel owners and operators should not be forced by another Federal agency to pay additional up-front and recurring fees to a private sector entity unless there are compelling reasons to do so. We tentatively conclude that there are no such compelling reasons.²¹⁶ We accordingly propose not to adopt the *MariTEL Frequency Coordinator Proposal*.²¹⁷

2. Sharing Proposal

56. We also decline to propose adoption of the *MariTEL Sharing Proposal* because, like the *MariTEL Frequency Coordinator Proposal*, its public interest benefits are unclear, and do not outweigh the clear disadvantages of the proposal.²¹⁸ Although, for reasons discussed above, we have tentatively determined to reject MariTEL's assertion that it may not be deprived of the use of Channels 87B and 88B without compensation, we would nonetheless welcome a resolution of this matter that would be acceptable to MariTEL as well as the Federal Government, if for no other reason than it would remove a possible source of litigation over these issues, and thus provide even greater certainty for the maritime community in going forward with deployment of AIS on Channels 87B and 88B. However, we conclude that there are several serious problems with the *MariTEL Sharing Proposal*.

57. To begin with, the *MariTEL Sharing Proposal* would permit MariTEL to use on a shared basis not only Channel 87B but also the Federal Government channel 88B.²¹⁹ The Commission is not empowered to give MariTEL any rights to use a Federal Government channel, and NTIA has not

²¹⁵ See, e.g., Furuno U.S.A. Comments re Coordination Proposal at 2; SLSMC Comments re Coordination Proposal at 2.

²¹⁶ Although we rely primarily on the reasons explained in the text for tentatively rejecting MariTEL's proposal, we note that the record also provides additional public interest reasons to reject the proposal. For example, MariTEL's proposed fees would burden not only vessel operators but U.S. taxpayers insofar as fees would be assessed on shore stations established by the Coast Guard or other government agencies. See USCG Comments re Coordination Proposal at 2. Imposing fees for AIS frequency coordination could also harm U.S. manufacturers of AIS equipment by reducing demand for such equipment. See Furuno U.S.A. Comments re Coordination Proposal at 2. In addition, adding charges to the U.S. and Canadian regulatory charges already imposed on vessels transiting the Saint Lawrence Seaway could encourage vessel operators to use alternative routes or transportation modes. See DOT/SLSDC Comments re Coordination Proposal at 5. Finally, government agencies have expressed concerns about security, privacy and other issues that arise from MariTEL's proposal to have real-time access to AIS data and to provide vessel location services and database access to state and local governments and private entities. See SLSMC Comments re Coordination Proposal at 2-3; USCG Comments re Coordination Proposal at 4.

²¹⁷ Having determined tentatively not to adopt the *MariTEL Frequency Coordinator Proposal* for reasons of policy, we will not at this time address, but will simply acknowledge, the comments questioning the Commission's legal authority to impose a requirement to pay fees to MariTEL, either on vessel owners generally, see BoatUS Comments re Coordination Proposal at 2, Coast Guard shore facilities, see USCG Comments re Coordination Proposal at 2, or foreign flagged vessels operating with AIS in United States waters, see USCG Comments re Coordination Proposal at 3; DOT/SLSDC Comments re Coordination Proposal at 5. In addition to these arguments, we note that the Coast Guard contends that MariTEL's proposal would impermissibly cede to MariTEL authority that should be exercised only by the Coast Guard with respect to coordinating deployment of AIS shore stations or imposing requirements on warships and other Federal Government vessels. See USCG Comments re Coordination Proposal at 3; see also NPRMC Comments re Sharing Proposal at 1.

²¹⁸ See MM&P I Comments re Sharing Proposal at 3 (stating that MariTEL's proposal does not add value to AIS).

²¹⁹ As noted above, ¶ 29, *supra*, Channel 88 is available for maritime public correspondence in only a small portion of the United States, and only after successful coordination with NTIA and Canada.

indicated any readiness to do so.²²⁰ For this reason alone, we are unable to propose adoption of the *MariTEL Sharing Proposal*.

58. In addition, we note that a number of commenters question MariTEL's assurance that its proposed sharing mechanism based on channel loading and slot sharing will be adequate to protect AIS operations from interference.²²¹ Lockheed Martin claims that MariTEL's suggested technology – FATDMA (Fixed Access Time Division Multiple Access) – is unproven, and that “[s]pectrum dedicated to critical safety and security purposes should not be the proving ground for new sharing techniques.”²²² In response, MariTEL reiterates that implementation of the *MariTEL Sharing Proposal* will not compromise the availability of AIS channels for legitimate Coast Guard operations, and says it will guarantee that Coast Guard operations and homeland security applications are not impaired.²²³ MariTEL also pledges that it will demonstrate the viability of the proposed time slot/channel loading technology prior to implementation.²²⁴ Finally, MariTEL states that, contrary to Lockheed Martin's assertion, implementation of its proposal is not dependent on use of FATDMA messaging.²²⁵ Because we believe that other aspects of the *MariTEL Sharing Proposal* warrant its rejection, we do not attempt here to resolve definitively the question of whether the *MariTEL Sharing Proposal* is technically feasible or technically appropriate given the maritime safety and homeland security purposes to which these channels are to be dedicated. We note, however, that we would be reluctant to accept it as sufficiently protective of AIS operations on the basis of the existing record. Were our other objections to the *MariTEL Sharing Proposal* completely resolved in the proposal's favor, we would still require the submission of more detailed technical information on how it would work. Accordingly, we invite commenters to consider the technical merits of MariTEL's proposal for shared use of the channels, without regard to the other facets of the *MariTEL Sharing Proposal*. Putting aside the particulars of the *MariTEL Sharing Proposal*, we seek comment on whether sharing of the channels by AIS and VPC stations is technically feasible through either MariTEL's channel loading/slot sharing proposal or some alternative technical solution.²²⁶

59. The aspect of the *MariTEL Sharing Proposal* that most concerned the commenters is that it would place restrictions on access to AIS data. As noted, the *MariTEL Sharing Proposal* is premised in part on the Commission adopting regulations precluding the reception and use of AIS transmissions except by MariTEL, the Coast Guard and ship stations.²²⁷ Commenters assert that if the full benefits of

²²⁰ See, e.g., NTIA Comments re Sharing Proposal at 2-3.

²²¹ See, e.g., APA Comments re Sharing Proposal at 3 (stating the *MariTEL Sharing Proposal* will unavoidably degrade AIS capacity); Nauticast Comments re Sharing Proposal at 3-4 (stating that the *MariTEL Sharing Proposal* is insufficiently specific to be properly evaluated, and that it could result in channel loading of a magnitude that would lower the quality of the service available to all users); LMRWSAC Comments re Sharing Proposal at 2 (stating that the *MariTEL Sharing Proposal* does not offer assurance that shared use of the frequencies will not result in a degradation of security and safety functions of AIS).

²²² See Lockheed Martin Comments re Sharing Proposal at 4.

²²³ See MariTEL Reply Comments re Sharing Proposal at 13.

²²⁴ *Id.*

²²⁵ *Id.*

²²⁶ With regard to AIS transmissions on the “shore” or “B” side of Channels 87 and 88, MariTEL asserts that it is impossible as a practical matter to filter interference from the AIS emission effectively enough to facilitate operation on the other VPC channels licensed to MariTEL. See MariTEL *ex parte* presentation dated June 30, 2004 at 4. MariTEL also contends that the only plausible means for other users of this spectrum to protect themselves from AIS interference is by designing a device that will not transmit during the 0.5% of the time AIS is transmitting. See MariTEL *ex parte* presentation dated May 17, 2004 at 7. We presume this functionality could be accomplished through different methods. Accordingly, we request comment on, *inter alia*, the feasibility of this approach, along with MariTEL's assertion that filtering AIS emissions is not an option.

²²⁷ See *MariTEL Sharing Proposal* at 2.

AIS are to be realized, AIS data must be widely available to a host of other federal and non-federal entities, such as pilot associations.²²⁸ Commenters point out that AIS is viewed as a critical component of future safety and security systems not only in VTS areas but also in other areas, and operated not only by the Coast Guard but also by, for example, the United States Navy, state and local port authorities, and maritime first responders.²²⁹ Precluding other entities from acquiring and using AIS information, or allowing such access and use only upon payment to MariTEL, could inhibit domestic implementation of AIS and could preclude beneficial public/private cooperative arrangements²³⁰ between the Coast Guard and private maritime associations.²³¹

60. Several commenters explain how adoption of MariTEL's proposed restrictions on AIS information will impact specific ongoing efforts to deploy AIS.²³² More generally, USGSC points out that the *MariTEL Sharing Proposal* could impair the ability of federal agencies, such as NOAA, or other entities, such as marine exchange or port authorities, to provide important information about oceanic conditions or for ships at sea to receive such information.²³³ In addition, commenters point out that the proposed restrictions on use of AIS information could have other negative consequences. For example, allowing free access to AIS information in VTS areas while charging users for such access in non-VTS areas, as MariTEL apparently proposes, could give the former an unfair commercial advantage over the latter.²³⁴ If shippers favor VTS ports because of this cost advantage, moreover, it could create additional traffic congestion at VTS ports, increasing the risk of collision.²³⁵ In sum, the consensus of the commenters is, as stated by LCA, that "[a]ccess to the AIS frequencies should be readily available and

²²⁸ See, e.g., APA Comments re Sharing Proposal at 4; Bar Pilots Comments re Sharing Proposal at 2; Port of New York/New Jersey Comments re Sharing Proposal at 1; MM&P I Comments re Sharing Proposal at 2; Lockheed Martin Comments re Sharing Proposal at 3; Nauticast Comments re Sharing Proposal at 4; NPRMC Comments re Sharing Proposal at 1; USCG Comments re Sharing Proposal; United Sandy Hook Pilots Comments re Sharing Proposal at 1.

²²⁹ See, e.g., LMRWSAC Comments re Sharing Proposal at 2; Lockheed Martin Comments re Sharing Proposal at 3.

²³⁰ MariTEL argues that the Commission did not contemplate public/private partnerships involving entities other than the Coast Guard using AIS, and that MariTEL should not be required to make its spectrum available for such public/private partnerships. See MariTEL Reply Comments re Sharing Proposal at 5, 7-8. We believe the public interest is served by accommodating such cooperative endeavors that employ AIS information, and that this is a factor militating against adoption of the *MariTEL Sharing Proposal* because it would limit access to AIS information in a way that could foreclose such arrangements. In addition to facilitating widespread use of AIS information, public/private partnerships could reduce AIS implementation costs incurred by the Federal Government, as the U.S. Government Accountability Office discusses in a recent report to Congress. See U.S. General Accountability Office, *Maritime Security: Partnering Could Reduce Federal Costs and Facilitate Implementation of Automatic Vessel Identification System*, Report to the Committee of Commerce, Science, and Transportation, U.S. Senate (GAO-04-868 July 2004) (viewable at <http://www.gao.gov/new.items/d04868.pdf>).

²³¹ See Bar Pilots Comments re Sharing Proposal at 2-4; LMRWSAC Comments re Sharing Proposal at 2; Coast Guard Comments re Sharing Proposal at 2. The Coast Guard observes that MariTEL's proposal potentially could not only end beneficial cooperative arrangements between the Coast Guard and various port authorities, but also arrangements between the Coast Guard and other federal agencies, such as NOAA. See Coast Guard Comments re Sharing Proposal at 2.

²³² See COLRIP Comments re Sharing Proposal at 1-2; Tampa Comments re Sharing Proposal at 2; Corps of Engineers – Detroit Comments re Sharing Proposal at 1; LMRWSAC Comments re Sharing Proposal at 1; accord TBHSC Comments at 1. AWO asserts that limiting use of Channels 87B and 88B to support just VTS operations and homeland security surveillance applications would "effectively render AIS unusable as a navigation tool." AWO Comments re Sharing Proposal at 1.

²³³ USGSC Comments re Sharing Proposal at 1.

²³⁴ See Tampa Comments re Sharing Proposal at 2; Lockheed Martin Comments re Sharing Proposal at 3.

²³⁵ See Lockheed Martin Comments re Sharing Proposal at 3-4.

free of charge.”²³⁶ We agree.²³⁷

61. Finally, with respect to the portion of the *MariTEL Sharing Proposal* that calls for the Commission to modify the technical requirements for AIS devices in order to prevent interference from AIS operations on Channels 87B and 88B to adjacent channel VPC channels, we are not persuaded that the Commission needs to revisit the AIS equipment requirements it so recently adopted.²³⁸ Our technical requirements are based on the international standards, and we are unwilling to unilaterally revise those requirements, and effectively abandon the standards-setting efforts to date, solely at the behest of and for the benefit of a single company.²³⁹ This is especially so because some of the mandatory AIS carriage deadlines have come into effect, and it is at best uncertain that we could develop new technical requirements soon enough to give vessel operators a reasonable opportunity to come into compliance. PVA states in this regard that AIS carriage requirements already represent a substantial economic burden for many passenger vessel operators, many of which are small businesses or governmental entities, and that this burden should not be increased simply for the benefit of MariTEL.²⁴⁰ In sum, a new rulemaking proceeding to revise the AIS technical requirements could slow AIS deployment, potentially engender uncertainty in the manufacturing and maritime communities, possibly result in the premature obsolescence of AIS equipment already installed, leave AIS equipment manufacturers who reasonably relied on the existing standards with significant stranded inventory, and potentially hinder AIS interoperability.²⁴¹

D. Other Matters

62. Notwithstanding our determination not to propose to adopt either the *MariTEL Frequency Coordinator Proposal* or the *MariTEL Sharing Proposal*, we seek comment on whether MariTEL or other private sector entities can use maritime VPC spectrum to provide services that can add value to AIS or that will otherwise be of utility to the maritime industry, consistent with the deployment and use of AIS on Channels 87B and 88B. On February 12, 2004, MariTEL submitted an *ex parte* presentation in the form of a letter with the subject line “Evolution of Marine VHF Data Services Requires FCC Action.”²⁴² The *Feb. 12 Letter* provides “additional information regarding the evolution of marine VHF data services

²³⁶ See LCA Comments re Sharing Proposal at 1; see also MM&P I Comments re Sharing Proposal at 2-3; Nauticast Comments re Sharing Proposal at 5.

²³⁷ We therefore do not need to reach the question of whether the Commission has legal authority under Section 705 of the Act to impose the restrictions on access to AIS information requested by MariTEL. We note that the commenters addressing this issue contend that Section 705 does not authorize such restrictions because MariTEL can make no legitimate claim to a proprietary interest in the AIS data. See Bar Pilots Comments re Sharing Proposal at 3 (stating that MariTEL does not own the data, and Section 705 is therefore inapplicable); Port of New York/New Jersey Comments re Sharing Proposal at 1 (observing that MariTEL has not revealed the amount of the royalty it intends to pay to vessels supplying AIS information that MariTEL wants to disseminate for a price); Lockheed Martin Comments re Sharing Proposal at 4 (arguing that MariTEL is essentially attempting to collect fees for AIS data that would otherwise be in the public domain by virtue of the broadcast nature of AIS).

²³⁸ See *GMDSS Second Report and Order*, 19 FCC Rcd at 3179-81 ¶¶ 64-67. In addition, we note that MariTEL may seek reconsideration of the AIS equipment standards promulgated in the *GMDSS Second Report and Order*, and our determination here not to propose adoption of the *MariTEL Sharing Proposal* is not intended to prejudice any such petition for reconsideration.

²³⁹ Accord COLRIP Comments re Sharing Proposal at 2; Nauticast Comments re Sharing Proposal at 6.

²⁴⁰ See PVA Comments re Sharing Proposal at 2-4.

²⁴¹ See, e.g., LMRWSAC Comments re Sharing Proposal at 2; MM&P I Comments re Sharing Proposal at 3; Nauticast Comments re Sharing Proposal at 5, 7.

²⁴² See Letter dated Feb. 12, 2004 from Dan Smith, President and CEO, MariTEL, to Catherine W. Seidel, Deputy Chief, Wireless Telecommunication Bureau, FCC (*Feb. 12 Letter*).

for the Commission's consideration in the various proceedings concerning the introduction of digital and data services using VPC spectrum."²⁴³ An exhibit to the *Feb. 12 Letter* gives an overview of a VHF data network service in Norway that demonstrates how VHF public correspondence channels may be used for data communications to and from vessels that enable a variety of applications potentially useful to the maritime community, such as e-mail, web browsing, payment transactions, group calls, and alarms for fleet management.²⁴⁴ We request comment on whether such services would be of utility for the domestic maritime community, and, if so, what actions, if any, the Commission should take to facilitate the provision of such services, consistent with protecting the integrity of AIS.²⁴⁵

63. MariTEL asks whether it can continue to employ Channels 87B and 88B²⁴⁶ in any fashion in any of its licensed service areas if the channels are designated for AIS exclusively.²⁴⁷ We note that the *NTIA Petition* requested that Channels 87B and 88B be allocated for AIS on an exclusive and nationwide basis, but that we are here proposing to limit the geographic scope of the allocation to the nine maritime VPCSA's, as the Commission did in 1998.²⁴⁸ The current record does not reflect a need for AIS spectrum in the inland VPCSA's, which do not contain or approach any major waterways. Moreover, limiting the AIS set-aside to the maritime VPCSA's would preserve the ability of inland VPCSA licensees to provide service, especially given that two duplex channels in each inland VPCSA are set aside for public safety use.²⁴⁹ We request comment on our tentative conclusion that inland VPCSA licensees should be permitted to operate on Channel 87B.²⁵⁰ We also seek comment on whether Channels 87B and 88B must be set aside throughout all of each maritime VPCSA, or whether there are areas²⁵¹ where VPC operations would not pose an interference threat. MariTEL also questions whether, if Channels 87B and 88B are designated for AIS, the channels could be used for shore station operations by commercial entities other than MariTEL.²⁵² We ask interested parties to address this question as well.²⁵³

64. The Commission's Universal Licensing System (ULS) database indicates that there are currently seven site-based incumbent VPC licensees authorized to operate on Channels 87B or 88B: Murray Cohen (KMC972, Farmingville, New York); Pacific Bell (KMH828, Oakland, California); Pat

²⁴³ *Id.* at 1.

²⁴⁴ *Id.* at Exhibit A.

²⁴⁵ We will incorporate the *Feb. 12 Letter*, as well as all of the other pleadings and *ex parte* presentations filed in response to the Bureau's three Public Notices, in the record of this rulemaking. MM&P has submitted a critique of the *Feb. 12 Letter*. See MM&P Reply Comments re Sharing Proposal at 2.

²⁴⁶ We note that Appendix 18 of the ITU *Radio Regulations* designates the frequency 161.975 MHz as Channel AIS 1 and the frequency 162.025 MHz as Channel AIS 2 in listing the transmitting frequencies in the maritime mobile band. Although we have generally referred to those frequencies herein as Channels 87B and 88B, we propose to use the AIS 1 and AIS 2 channel designators in our Rules, in keeping with the international practice, if we designate those channels for exclusive AIS use in the United States.

²⁴⁷ See MariTEL Comments at 18.

²⁴⁸ See *Public Coast Third Report and Order*, 13 FCC Rcd at 19875-76 ¶ 48.

²⁴⁹ See 47 C.F.R. § 80.371(c)(1)(ii).

²⁵⁰ Channel 88 is not available to inland VPCSA licensees, even above Line A, because those VPCSA's do not encompass any of the areas identified in note US223. See 47 C.F.R. § 80.57; Auction No. 20 Bidder Information Package Erratum (1998) at 3.

²⁵¹ E.g., Idaho (VPCSA 7) or Vermont (VPCSA 1).

²⁵² MariTEL Comments at 19.

²⁵³ We note in this context that ShipCom argues that the *NTIA Petition* fails to provide sufficient detail about NTIA's proposal. See ShipCom Comments at 4-5. Commenters may identify any aspects of our proposal that they believe to be in need of clarification.

Gardenhire (KUF681, Boyce, Texas); Nextel of California, Inc. (KUF847, San Pedro, California); Avalon Communications Corp. (WAH, St. Thomas, Virgin Islands); Whidbey Telephone Company (WHU300, Freeland, Washington); and Shipcom, LLC (WRD704, Mobile, Alabama).²⁵⁴ Two commenters have argued that the *NTIA Petition* should be denied or conditioned because of the potential interference impact on their operations.²⁵⁵ ShipCom states that the interests of incumbent site-based VPC licensees could be compromised if Channels 87B and 88B are used for AIS on a wideband simplex basis.²⁵⁶ ShipCom argues that if the Coast Guard intends to use the incumbents' spectrum, the Coast Guard should either negotiate for such use with the incumbents or perform frequency management as contemplated under the Coast Guard's final AIS rules.²⁵⁷ In a similar vein, Tittle contends that NTIA's proposed AIS operations may result in destructive interference to co-channel and adjacent channel public correspondence communications carried by site-based incumbent VPC licensees.²⁵⁸

65. We now ask for comment regarding the effect on these site-based incumbent VPC licensees of adopting our proposal to designate Channels 87B and 88B for AIS. Can these existing VPC operations co-exist on a non-interference basis with AIS? If not, how should the interference problem be addressed? We note that incumbent site-based licensees are accorded interference protection from geographic area VPC operations under current rules.²⁵⁹ If we require that these existing operations continue to be protected from interference even after Channel 87B is designated for AIS, how will that affect AIS implementation in the United States? Commenters who believe it is necessary to migrate these operations to other spectrum or to compensate these licensees in some way should indicate how and under what authority such migration could occur or such compensation could be provided. In addition, we invite comment as to whether we should consider initiating a proceeding to modify any of the outstanding VPC licenses pursuant to Section 316 of the Act.²⁶⁰ In this regard, we seek comment as to whether these stations are in active operation, and, if not, whether these licenses should be cancelled or otherwise modified to delete the frequencies associated with Channels 87B and 88B.²⁶¹ We also note that most of these stations are authorized on other VPC channels in addition to Channels 87 or 88 or channels adjacent thereto, and we seek comment on the extent to which these other channels would provide sufficient capacity for the stations' current and future needs. In addition, we seek information about current traffic on the channels assigned to incumbent VPC licensees.

²⁵⁴ See Appendix D for a list of these incumbent site-based licenses. As shown in Appendix D, there are also a few private land mobile radio licensees operating on Channel 87B within one of the maritime VPCsAs licensed pursuant to former Section 90.283 of the Commission's Rules, 47 C.F.R. § 90.283 (1997).

²⁵⁵ See ShipCom Comments at 3-5; Tittle Reply Comments at 2. Havens, a licensee of inland VPCsAs, also argues that the *NTIA Petition* should be denied, and contends that the Commission should instead direct NTIA to enter negotiations to reach a mutually acceptable solution with VPC licensees. Havens Reply Comments at 2-3.

²⁵⁶ See ShipCom Comments at 3.

²⁵⁷ *Id.* at 3-4. ShipCom suggests that compensation to ShipCom (and, presumably, similarly situated incumbent site-based licensees) could include cash, grandfathering protection, or replacement spectrum. *Id.* at 5. See also Havens Reply Comments at 2.

²⁵⁸ Tittle Reply Comments at 2. In addition to the stations listed above, ULS lists twelve adjacent channel site-based incumbent VPC stations.

²⁵⁹ See 47 C.F.R. § 80.773(a).

²⁶⁰ 47 U.S.C. § 316.

²⁶¹ Because the Commission has forborne from Section 214 regulation of domestic CMRS carriers, it is possible that a licensee has discontinued service, but not turned in its license. See Implementation of Sections 3(n) and 332 of the Communications Act – Regulatory Treatment of Mobile Services, *Second Report and Order*, GN Docket No. 93-252, 9 FCC Rcd 1411, 1480-81 ¶ 182 (1994). Any such licensee should, however, have notified the Coast Guard if it was discontinuing a safety watch. 47 C.F.R. § 80.302(a).

66. If we adopt our proposal to designate Channels 87B and 88B for AIS exclusively, we propose to also modify the table in Section 80.371(c) of the Commission's Rules²⁶² to reflect that Channels 87 and 88 may be used for radiotelephony in the single channel (simplex) mode only. Currently, VHF radiotelephones manufactured and sold in the United States, when set to the U.S. channel mode, operate on a two frequency (duplex) mode when Channel 87 is selected, and on a single frequency (simplex) mode when Channel 88 is selected. Radiotelephones set to the international channel mode would follow the ITU *Radio Regulations*, Appendix 18, "Table of transmitting frequencies in the maritime mobile band," and, therefore, radiotelephones built or designed after these ITU changes came into effect would operate on a single (simplex) frequency on both channels. We seek comment on this proposal. We also seek comment on whether we should simply delete Channels 87 and 88 from the Section 80.371(c) table instead of modifying the table as proposed.

V. CONCLUSION

67. The development and deployment of AIS promises to significantly enhance the nation's maritime safety and homeland security by providing an effective tool to prevent vessel collisions and for vessel tracking in furtherance of Marine Domain Awareness. There are clear and important benefits to implementing AIS domestically on VHF maritime Channels 87B and 88B, consistent with the international allocation of those channels for AIS, rather than on any other maritime channels. Accordingly, we tentatively determine to work with NTIA to allocate both channels for exclusive AIS use in the nine maritime VPCSA's. As a consequence of MariTEL's termination of the MOA with the Coast Guard, we believe we must take this action now to provide certainty to the domestic maritime community with respect to AIS deployment. After fully reviewing the regulatory history, the comments submitted in response to the Bureau's public notices, and the interference analyses submitted by MariTEL and NTIA, we tentatively conclude that designating Channel 87B for AIS use domestically will not have a significantly greater preclusive effect, if any, on MariTEL's ability to use its licensed VPC spectrum compared to the designation for that purpose of two narrowband channel pairs, as contemplated in Section 80.371(c)(3) prior to MariTEL's participation in the VPC auction. We also tentatively conclude, therefore, that our action herein is both equitable and fully consistent with the Commission's competitive bidding policies and rules. We invite comment on all of our tentative conclusions and on all aspects of our proposal.

VI. REGULATORY MATTERS

A. Ex Parte Rules - Permit-But-Disclose Proceeding

68. This is a permit-but-disclose notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's rules.²⁶³

B. Regulatory Flexibility Act

69. As required by the Regulatory Flexibility Act (RFA),²⁶⁴ the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the rules proposed or discussed in the *Notice of Proposed Rule Making* in WT Docket No. 04-xx. The IRFA for the *Notice of Proposed Rule Making* in WT Docket No. 04-xx is contained in Appendix C. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines for comments on the *Notice*

²⁶² 47 C.F.R. § 80.371(c).

²⁶³ See generally 47 C.F.R. §§ 1.1202, 1.1203, 1.1206(a).

²⁶⁴ 5 U.S.C. § 603.

of *Proposed Rule Making* in WT Docket No. 04-xx, and they should have a separate and distinct heading designating them as responses to the IRFA. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of the *Notice of Proposed Rule Making* in WT Docket No. 04-xx, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with the Regulatory Flexibility Act.²⁶⁵

C. Comment Dates

70. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments on or before [45 days after Federal Register publication] and reply comments on or before [75 days after Federal Register publication]. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.²⁶⁶

71. Comments filed through the ECFS can be sent as an electronic file via the Internet to <<http://www.fcc.gov/e-file/ecfs.html>>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th St., S.W., Washington, D.C. 20554. Filings can be sent first class by the U.S. Postal Service, by an overnight courier or hand and message-delivered. Hand and message-delivered paper filings must be delivered to 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. Overnight courier (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

72. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to: Jeffrey Tobias, Wireless Telecommunications Bureau, 445 12th St., S.W., Room 3-A432, Washington, D.C. 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using Microsoft Word or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the lead docket number in this case, WT Docket No. 04-344), type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase "Disk Copy - Not an Original." Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters should send diskette copies to the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th St., S.W., Room CY-B402, Washington, D.C. 20054.

D. Paperwork Reduction Act

73. This document does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or

²⁶⁵ *Id.* § 603(a).

²⁶⁶ See Electronic Filing of Documents in Rulemaking Proceedings, *Report and Order*, GC Docket No. 97-113, 13 FCC Rcd 11322 (1998).

tim.maguire@fcc.gov, Wireless Telecommunications Bureau, (202) 418-0680, or TTY (202) 418-7233.

75. Alternative formats (computer diskette, large print, audiocassette and Braille) are available to persons with disabilities by contacting Brian Millin at (202) 418-7426, TTY (202) 418-7365, or at bmillin@fcc.gov. This *Memorandum Opinion and Order and Notice of Proposed Rule Making* can also be downloaded at: <http://www.fcc.gov/>.

F. Ordering Clauses

76. Accordingly, IT IS ORDERED that, pursuant to the authority of Sections 4(i), 303(r), and 332(a)(2) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), 332(a)(2), and Section 1.2 of the Commission's Rules, 47 C.F.R. § 1.2, the Petition for Declaratory Ruling filed by MariTEL, Inc. on April 4, 2003, IS DENIED.

77. IT IS FURTHER ORDERED that, pursuant to the authority of Sections 4(i), 303(r), and 332(a)(2) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), 332(a)(2), the request by MariTEL, Inc. that we withdraw authorization of shipborne AIS equipment, as set forth in the Letter dated July 30, 2003 from Russell H. Fox, counsel for MariTEL, Inc. to D'wana R. Terry, Chief, Public Safety and Private Wireless Division, IS DENIED.

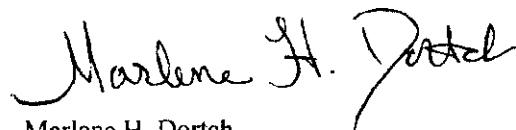
78. IT IS FURTHER ORDERED that, pursuant to the authority of Sections 4(i), 303(r), and 332(a)(2) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), 332(a)(2), the Emergency Petition for Declaratory Ruling filed by MariTEL, Inc. on October 15, 2003, and supplemented by MariTEL, Inc. October 27, 2003, IS DENIED.

79. IT IS FURTHER ORDERED that, pursuant to the authority of Sections 4(i), 303(r), and 332(a)(2) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), 332(a)(2), the Petition for Rule Making filed by the National Telecommunications and Information Administration on October 24, 2003 IS GRANTED to the extent set forth herein.

80. IT IS FURTHER ORDERED that, pursuant to Sections 4(i), 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r) and 403, this *Memorandum Opinion and Order and Notice of Proposed Rule Making* IS HEREBY ADOPTED, and NOTICE IS HEREBY GIVEN of the proposed regulatory changes described in the *Notice of Proposed Rule Making* and contained in Appendix B.

81. IT IS FURTHER ORDERED that the Commission's Consumer Information Bureau, Reference Information Center, SHALL SEND a copy of this *Memorandum Opinion and Order and Notice of Proposed Rule Making*, including the Initial Regulatory Flexibility Analysis for the *Notice of Proposed Rule Making*, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION



Marlene H. Dortch
Secretary

APPENDIX A²⁶⁷**Parties Submitting Comments and Reply Comments in Response to Public Notice DA 03-3585**

The following list contains the names of parties filing comments and reply comments in response to the Bureau public notice seeking comment on the *MariTEL Emergency Petition* and the *NTIA Petition*.

Comments

Boat Owners Association of The United States (BoatUS)²⁶⁸
Canadian Embassy
Ingram Barge Company (Ingram Barge)
Lockheed Martin Corporation (Lockheed Martin)
Marine Management Consulting (MMC)
MariTel, Inc. (MariTEL)
National Marine Electronics Association (NMEA)
Nauticast Schiffsnavigationssysteme AG (Nauticast)
Radio Technical Commission for Maritime Services (RTCM)
The Saint Lawrence Seaway Management Corporation (SLSMC)
ShipCom, LLC (ShipCom)

Reply Comments

American Mobile Telecommunications Association (AMTA)
MariTEL
National Telecommunications and Information Administration (NTIA)
Thomas W. Tittle d/b/a Burns Harbor Radio (Tittle)
United States Coast Guard (USCG)
Warren C. Havens and Telesaurus Holdings GB LLC (Havens)

Parties Submitting Comments and Reply Comments in Response to Public Notice DA 03-3669

The following list contains the names of parties filing comments and reply comments in response to the Bureau public notice seeking comment on the *MariTEL Frequency Coordinator Proposal*:

Comments

MariTEL
Mississippi Department of Public Safety (Mississippi DPS)
RTCM
BoatUS
Furuno U.S.A., Inc. (Furuno USA)
Harris Corporation (Harris Corp.)
Ingram Barge

²⁶⁷ We note that some comments filed in this proceeding were filed late or otherwise did not comply with the Commission's pleading requirements. Given that we are initiating a Notice of Proposed Rule Making, we will incorporate all of the comments filed thus far into the record of the rulemaking proceeding in the interest of compiling as complete a record as possible, and because to do so will not prejudice any party. However, we remind interested parties in this proceeding that we reserve discretion to not accept comments that are filed late without a supported request for a waiver or motion to accept late-filed comments, or are otherwise filed incorrectly.

²⁶⁸ We received two separate comments from BoatUS in response to the *AIS Public Notice*: a letter, undated, from Michael G. Sciulla, Vice President, Government and Public Affairs, referred to as BoatUS I for citation purposes, and a letter, dated December 1, 2003, from Elaine Dickinson, Asst. Vice President, referred to as BoatUS II for citation purposes.

MMC
National GMDSS Task Force (Task Force)
NTIA
Nauticast
SLSMC
Sea Tow Services International (Sea Tow)
Shine Micro, Inc. (Shine Micro)
Tidewater Marine
Tittle
USCG
U.S. Department of Transportation, on behalf of the Saint Lawrence Seaway Development Corporation
(DOT/SLSDC)

Reply Comments

MariTEL
Ingram Barge

Parties Submitting Comments and Reply Comments in Response to Public Notice DA 04-378

The following list contains the names of parties filing comments and reply comments in response to the Bureau public notice seeking comment on the *MariTEL Sharing Proposal*:

Comments

American Pilots Association, Inc. (APA)
The American Waterways Operators (AWO)
Associated Branch Pilots of the Port of New Orleans (Bar Pilots)
Columbia River Pilots (COLRIP)
DOT/SLSDC
The Harbor Safety, Operations and Navigation Committee of the Port of New York and New Jersey
(Port of New York/New Jersey)
International Organization of Masters Mates & Pilots (MM&P)
Lake Carriers' Association (LCA)
Lockheed Martin
The Lower Mississippi River Waterway Safety Advisory Committee (LMRWSAC)
NTIA
Nauticast
North Pacific Marine Radio Council (NPMRC)
Passenger Vessel Association (PVA)
Tampa Bay Harbor Safety Committee (TBHSC)
Tampa Port Authority (Tampa)
United New York Sandy Hook Pilots' Benevolent Ass'n/ United New Jersey Sandy Hook Pilots'
Benevolent Ass'n (United Sandy Hook Pilots)
U.S. Army Corps of Engineers, Detroit District (Corps of Engineers – Detroit)
USCG
U.S. Global Ocean Observing System Steering Committee (USGSC)

Reply Comments

MM&P
MariTEL

APPENDIX B

PROPOSED RULES

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 C.F.R. parts 2 and 80 as follows:

**PART 2 -- FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS;
GENERAL RULES AND REGULATIONS**

1. The authority citation for part 2 continues to read as follows:

AUTHORITY: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

2. Section 2.106, the Table of Frequency Allocations, is amended as follows:

- a. Revise pages 30 and 31.

- b. In the list of United States (US) Notes, add note USxxx and remove note US223.

§ 2.106 Table of Frequency Allocations.

The revisions and additions read as follows:

*

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*

156.7625-156.8375 MARITIME MOBILE (distress and calling)				
5.111 5.226		5.226 5.227 US77 US106 US107 US266	5.226 5.227 US77 US106 US107 US266 NG117	
156.8375-174 FIXED MOBILE except aeronautical mobile	156.8375-174 FIXED MOBILE	157.0375-157.1875 MARITIME MOBILE	157.0375-157.1875	Private Land Mobile (90)
		5.226 US214 US266 G109	5.226 US214 US266	
		157.1875-157.45	157.1875-157.45 LAND MOBILE MARITIME MOBILE	Maritime (80) Private Land Mobile (90)
		5.226 US266	5.226 US266 NG111	
		157.45-161.575	157.45-161.575 FIXED LAND MOBILE	Public Mobile (22) Maritime (80) Private Land Mobile (90)
		5.226 US266	5.226 US266 NG6 NG28 NG70 NG111 NG112 NG124 NG148 NG155	
		161.575-161.625	161.575-161.625 MARITIME MOBILE	Public Mobile (22) Maritime (80)
		5.226 US77	5.226 US77 NG6 NG17	
		161.625-161.775	161.625-161.775 LAND MOBILE	Public Mobile (22) Auxiliary Broadcasting (74)
		5.226	5.226 NG6	
		161.775-162.0125	161.775-162.0125 LAND MOBILE MARITIME MOBILE	Public Mobile (22) Maritime (80) Private Land Mobile (90)
		5.226 US266 USxxx	5.226 US266 USxxx NG6	
		See next page for 162.0125-174 MHz		See next page for 162.0125-174 MHz
5.226 5.229	5.226 5.230 5.231 5.232			

162.0125-322 MHz (VHF/UHF)					Page 31
International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
See previous page for 156.8375-174 MHz			162.0125-173.2 FIXED MOBILE	162.0125-173.2	Auxiliary Broadcasting (74) Maritime (80) Private Land Mobile (90)
			5.226 US8 US11 US13 US216 US300 US312 USxxx G5	5.226 US8 US11 US13 US216 US300 US312 USxxx	
			173.2-173.4	173.2-173.4 FIXED Land mobile	Private Land Mobile (90)
			173.4-174 FIXED MOBILE	173.4-174	
			G5		
174-223 BROADCASTING	174-216 BROADCASTING Fixed Mobile	174-223 FIXED MOBILE BROADCASTING	174-216	174-216 BROADCASTING	Broadcast Radio (TV) (73) Auxiliary Broadcasting (74)
	5.234			NG115 NG128 NG149	
	216-220 FIXED MARITIME MOBILE Radiolocation 5.241		216-220 Fixed Mobile Radiolocation 5.241 G2	216-220 FIXED MOBILE except aeronautical mobile	Maritime (80) Private Land Mobile (90) Personal Radio (95) Amateur (97)
	5.242		US210 US229	US210 US229 NG152 NG173	
5.235 5.237 5.243	220-225 AMATEUR FIXED MOBILE Radiolocation 5.241	5.233 5.238 5.240 5.245	220-222 FIXED LAND MOBILE Radiolocation 5.241 G2	220-222 FIXED LAND MOBILE	Private Land Mobile (90)
			US335	US335	
			222-225 Radiolocation 5.241 G2	222-225 AMATEUR	Amateur (97)

UNITED STATES (US) NOTES

USxxx The bands 161.9625-161.9875 MHz (AIS 1 with its center frequency at 161.975 MHz) and 162.0125-162.0375 MHz (AIS 2 with its center frequency at 162.025 MHz) are allocated to the maritime mobile service on a primary basis for Federal and non-Federal Government use in VHF Public Coast Station Areas (VPCSA) 1-9. In these areas, the maritime mobile service shall be used exclusively for Automatic Identification Systems (AIS). In VPCSA 10-42, the band 161.9625-161.9875 MHz is allocated to the maritime mobile service on a primary basis for exclusive non-Federal Government use and the 162.0125-162.0375 MHz is allocated to the fixed and mobile services on a primary basis for exclusive Federal Government use. See 47 CFR § 80.371(c)(1)(ii) for the definitions of VPCSA.

II. PART 80 -- STATIONS IN THE MARITIME SERVICES

3. The authority citation for Part 80 continues to read as follows:

AUTHORITY: Secs. 4, 303, 307(e), 309, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, 307(e), 309, and 332, unless otherwise noted. Interpret or apply 48 Stat. 1064-1068, 1081-1105, as amended; 47 U.S.C. 151-155, 301-609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

4. Section 80.5 is amended by adding an entry for Automatic Identification Systems (AIS) to read as follows:

§ 80.5 Definitions.

* * * * *

Automatic Identification Systems (AIS). A maritime navigation safety communications system standardized by the International Telecommunication Union (ITU) that provides vessel information, including the vessel's identity, type, position, course, speed, navigational status and other safety-related information automatically to appropriately equipped shore stations, other ships, and aircraft; receives automatically such information from similarly fitted ships; monitors and tracks ships; and exchanges data with shore-based facilities.

* * * * *

5. Section 80.13 is amended by revising paragraph (c) to read as follows:

§ 80.13 Station license required.

* * * * *

(c) A ship station is licensed by rule and does not need an individual license issued by the FCC if the ship station is not subject to the radio equipment carriage requirements any statute, treaty or agreement to which the United States is signatory, the ship station does not travel to foreign ports, and the ship station does not make international communications. A ship station licensed by rule is authorized to transmit radio signals using a marine radio operating in the 156-162 MHz band, any type of AIS, any type of EPIRB, and any type of radar installation. All other transmissions must be authorized under a ship station license. Even though an individual license is not required, a ship station licensed by rule must be operated in accordance with all applicable operating requirements, procedures, and technical specifications found in this part.

6. Section 80.371 is amended by revising paragraphs (c)(1)(i), (c)(2) and (c)(3) to read as follows:

§ 80.371 Public correspondence frequencies.

* * * * *

(c) Working frequencies in the marine VHF 156-162 MHz band. (1)(i) The frequency pairs listed in the following table are available for assignment to public coast stations for public correspondence communications with ship stations and units on land.

Working Carrier Frequency Pairs in the 156-162 MHz Band¹

Channel designator	Carrier Frequency (MHz)	
	Ship Transmit	Coast Transmit
24.....	157.200	161.800
84.....	157.225	161.825
25.....	157.250	161.850
85 ²	157.275	161.875
26.....	157.300	161.900
86.....	157.325	161.925
27.....	157.350	161.950
87 ³	157.375	157.375
28.....	157.400	162.000
88 ⁴	157.425	157.425

¹ For special assignment of frequencies in this band in certain areas of Washington State, the Great Lakes and the east coast of the United States pursuant to arrangements between the United States and Canada, see subpart B of this part.

² The frequency pair 157.275/161.875 MHz is available on a primary basis to ship and public coast stations. In Alaska it is also available on a secondary basis to private mobile repeater stations.

³ Within VHF Public Coast Station Areas (VPCSAs) 1 through 9 listed in the table in paragraph (c)(1)(ii) of this section, the frequency 161.975 MHz may be used only for Automatic Identification system communications.

⁴ Within that portion of VHF Public Coast Station Areas (VPCSAs) 1 through 9 listed in the table in paragraph (c)(1)(ii) of this section within 120 km (75 miles) of the United States/Canada border, in the area of the Great Lakes, the Saint Lawrence Seaway, and the Puget Sound and the Strait of Juan de Fuca and its approaches, the frequency 157.425 MHz is available for use by ship stations for public correspondence communications and the frequency 162.025 MHz is available only for Automatic Identification System communications. One hundred twenty kilometers (75 miles) from the United States/Canada border 157.425 MHz is available for intership and commercial communications. Outside the Puget Sound area and its approaches and the Great Lakes, 157.425 MHz is available for communications between commercial fishing vessels and associated aircraft while engaged in commercial fishing activities.

* * * * *

(2) Any recovered channel pairs will revert automatically to the holder of the VPCSA license within which such channels are included, except the channel pairs listed in the table in paragraph (c)(1)(i) of this section. Those channel pairs, and any channel pairs recovered where there is no VPCSA licensee, will be retained by the Commission for future licensing.

(3) VPCSA licensees may not operate on Channel 228B (162.0125 MHz), which is available for use in the Coast Guard's Ports and Waterways Safety System (PAWSS). In addition, VPCSA licensees in VPCSAs 1-9 may not operate on Channel AIS 1 (161.975 MHz) or Channel AIS 2 (162.025 MHz), which are designated in those areas exclusively for Automatic Identification Systems (AIS), except to transmit and receive AIS communications to the same extent, and subject to the same limitations, as other shore stations participating in AIS.

* * * * *

7. Section 80.373 is amended by revising paragraph (j) to read as follows.

§ 80.373 Private communications frequencies.

* * * * *

- (j) Frequencies for portable ship stations. VHF frequencies authorized for stations authorized carrier frequencies in the 156.275 MHz to 157.450 MHz and 161.575 MHz to 162.025 MHz bands may also be authorized as marine utility stations. Marine-utility stations on shore must not cause interference to any Automatic Identification System, VHF or coast station, VHF or UHF land mobile base station, or U.S. Government station.

8. Section 80.393 is added under the heading AIS STATIONS to read as follows:

§ 80.393 Frequencies for AIS stations.

Automatic Identification Systems (AIS) is a maritime broadcast service provided by both the United States Coast Guard and Commission licensees. The simplex channels at 161.975 MHz (AIS 1) and 162.025 MHz (AIS 2), each with a 25 kHz bandwidth, may be authorized in VHF Public Coast Station Areas 1-9 for AIS. These areas are codified at 47 CFR § 80.371(c)(1)(ii). In accordance with the Maritime Transportation Security Act, the United States Coast Guard regulates AIS carriage requirements for non-Federal Government ships. These requirements are codified at 33 CFR §§ 164.46, 401.20.

APPENDIX C

INITIAL REGULATORY FLEXIBILITY ANALYSIS

(Notice of Proposed Rule Making in WT Docket No. 04-344)

As required by the Regulatory Flexibility Act (RFA),²⁶⁹ the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in the *Notice of Proposed Rule Making* in WT Docket No. 04-344 (*NPRM*). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *NPRM* as provided in paragraph 70, *supra*, of the item. The Commission will send a copy of the *NPRM*, including the IRFA, to the Chief Counsel for Advocacy of the U.S. Small Business Administration.²⁷⁰ In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the Federal Register.²⁷¹

A. Need for, and Objectives of, the Proposed Rules

In the *NPRM*, we seek comment on rule amendments that are intended to identify the spectrum that should be used for maritime Automatic Identification Systems (AIS) in the United States and its territorial waters. AIS is an important tool for enhancing maritime safety and homeland security, and we are concerned that recent developments may have created uncertainty in the maritime community regarding the very high frequency (VHF) channels to be used for AIS, and that this in turn could impede efforts to expedite the broad deployment of AIS domestically.²⁷² In the *NPRM*, we propose to designate VHF maritime Channels 87B and 88B for AIS use domestically, in keeping with the international allocation of those channels for AIS, because we believe the use of those channels will best secure to the United States the maritime safety and homeland security benefits of AIS.

B. Legal Basis for Proposed Rules

The proposed action is authorized under sections 1, 4(i), 302, 303(f) and (r), and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 1, 154(i), 302, 303(f) and (r), and 332.

C. Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply

The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.²⁷³ The RFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and

²⁶⁹ See 5 U.S.C. § 603. The RFA, see 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. 104-121, Title II, 110 Stat. 857 (1996).

²⁷⁰ *Id.* § 603(a).

²⁷¹ See *id.*

²⁷² These developments include the termination of the Memorandum of Agreement between the U.S. Coast Guard and MariTEL, Inc. regarding the set-aside of channels for AIS, and the various petitions and pleadings filed by NTIA and MariTEL following the termination. See ¶¶ 16-23, *supra*.

²⁷³ 5 U.S.C. § 603(b)(3).

"small governmental jurisdiction."²⁷⁴ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.²⁷⁵ A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).²⁷⁶

Small businesses in the aviation and marine radio services use a very high frequency (VHF) marine or aircraft radio and, as appropriate, an emergency position-indicating radio beacon (and/or radar) or an emergency locator transmitter. The Commission has not developed a small business size standard specifically applicable to these small businesses. For purposes of this analysis, the Commission uses the SBA small business size standard for the category "Cellular and Other Telecommunications," which is 1,500 or fewer employees.²⁷⁷ Between December 3, 1998 and December 14, 1998, the Commission held an auction of 42 VHF Public Coast (VPC) licenses in the 157.1875-157.4500 MHz (ship transmit) and 161.775-162.0125 MHz (coast transmit) bands. For purposes of the auction, the Commission defined a "small" business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed fifteen million dollars. In addition, a "very small" business is one that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed three million dollars.²⁷⁸ There are approximately 10,672 licensees in the Marine Coast Service, and the Commission estimates that almost all of them qualify as "small" businesses under the above special small business size standards.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

There are no projected reporting, recordkeeping or other compliance requirements.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.²⁷⁹

In the *NPRM*, we request comment on the proposal to designate Channels 87B and 88B for exclusive AIS use. We describe here, and seek comment on, possible alternatives to imposing these new rules that might minimize the economic impact on small entities. First, we ask commenters to consider

²⁷⁴ 5 U.S.C. § 601(6).

²⁷⁵ 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632). Pursuant to the RFA, the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register." 5 U.S.C. § 601(3).

²⁷⁶ Small Business Act, 15 U.S.C. § 632 (1996).

²⁷⁷ 13 CFR § 121.201, NAICS code 517212 (2002).

²⁷⁸ Amendment of the Commission's Rules Concerning Maritime Communications, *Third Report and Order and Memorandum Opinion and Order*, 13 FCC Rcd 19853 (1998).

²⁷⁹ See 5 U.S.C. § 603(c)(1)-(c)(4).

the interference impact on MariTEL, Inc., licensee of the nine maritime VPC service areas, or on any incumbent site-based VPC licensees or any Economic Area (EA) VPC licensees of the proposed designation of Channels 87B and 88B for AIS exclusively. We tentatively conclude that the proposed designation of Channels 87B and 88B for AIS should not have an adverse effect on MariTEL's use of its VPC channels to a materially greater extent, if at all, than would designation of two narrowband offset channel pairs of the Commission's choosing from the 156-162 MHz VHF maritime band.²⁸⁰ We request comment on this tentative conclusion. In addition, commenters are asked if incumbent site based VPC operations can co-exist on a non-interference basis with AIS and, if not, should the Commission require that that these operations be migrated to other spectrum and/or should the licensees be compensated in some way.

Commenters are requested to identify potential means of minimizing or eliminating any adverse economic impact on any small entities, particularly VPC licensees that qualify as small entities, if Channels 87B and 88B are designated for AIS use. Such means may include, but are not limited to, exemptions, grandfathering protection, or geographic limitations on the use of Channels 87B and 88B for AIS. Additionally or alternatively, we seek comment on whether we could provide replacement spectrum for licensees who may find themselves unable to continue using their licensed VPC channels because of our proposal. For example, we might be able to modify their licenses to provide other channels in lieu of Channels 87B and 88B. We also could designate channels other than Channels 87B and 88B for AIS use in the United States as a means of minimizing any adverse economic impact on these licensee. We note, however, that mandating use of channels other than Channels 87B and 88B for AIS use in the United States may have an adverse economic impact on vessel operators and radio equipment manufacturers that qualify as small entities by, for example, increasing the cost of AIS equipment, causing premature obsolescence of AIS equipment already installed on vessels, or leaving manufacturers with stranded inventory. Accordingly, commenting parties, and particularly commenting parties who favor adopting an alternative to the Commission's proposal, are asked to address the potential economic impact of that alternative on small entities.

In Appendix D, we list all of the incumbent site-based licensees that currently operate within VHF Public Coast Service Areas (VPCSA) 1-9 on the channels which we are proposing to designate for exclusive AIS use. We assume for purposes of this IRFA that some or all of these licensees qualify as small entities. We specifically invite these licensees to address the expected economic impact on them of our proposal, and to suggest alternatives or additions to our proposal that would minimize that impact, including but not limited to the methods discussed in the preceding paragraph.

We also note that there are incumbent licensees operating on the specified channels in inland areas. We do not anticipate any significant adverse effect on any such licensee due to the geographic limitations of our proposal, *i.e.*, our limiting the AIS set-aside to areas near major navigable waterways. Commenters who believe differently are asked to describe the expected adverse economic impact on incumbent inland licensees operating on these or adjacent channels, and to provide suggested methods of minimizing any such impact. In addition, we note that, although we are proposing only to designate Channels 87B and 88B for AIS in the nine maritime VPCSA, we have not foreclosed the possibility of designating those channels for AIS on a nationwide basis. Accordingly, inland licensees and other interested parties should address the possible economic impact on small entities if we were to designate Channels 87B and 88B for AIS in inland areas as well as the nine maritime VPCSA.

²⁸⁰ See ¶¶ 41-50, *supra*.

F. Federal Rules that May Duplicate, Overlap, or Conflict With the Proposed Rules

None.

IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this *Notice of Proposed Rule Making*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Appendix D: Licensees Operating on 161.975 MHz and 162.025 MHz

Table 1: Site-based Licenses Listed in the Universal Licensing System (ULS) for the Frequencies 161.975 MHz and 162.025 MHz					
The Frequency 161.975 MHz is licensed for Use in a Geographic Area that is within One or More of the Nine Maritime VHF Public Coast Stations					
Call Sign	Licensee Name	Location of Station	VPCSA	Radio Service	Station Class
KMC972	Cohen, Murray	Farmingville, NY	5	Coastal Group (MC)	Public Coast Station
KMH828	Pacific Bell	Oakland, CA	6		
KUF681	Gardenhire, Pat	Boyce, TX	4		
KUF847	Nextel of California Inc.	San Pedro, CA	6		
KZT919	Morris Coop Oil Association	Morris, MN	4	Conventional Industrial/Business Pool (IG)	Mobile Relay Station
		40 km radius around Morris, MN			Mobile Station (MO)
WAH	Avalon Communications Corp.	Saint Thomas, VI	3	MC	FC
WHU300	Whidbey Telephone Company	Freeland, WA	7		
WPGA970	Arizona, State of	Operates throughout AZ	6 (La Paz and Yuma Counties), 36, 37, 39, 41, and 42	Conventional Public Safety Pool (PW)	Temporary Control Station (FX1T)
WPKA286	Kuehn, Stanley	Sanborn, MN	4	IG	FB2
		40 km radius around Sanborn, MN			MO
WRD704	Shipcom, LLC	Mobile, AL	4	MC	FC
The Frequency 162.025 MHz is licensed for Use in a Geographic Area within One of the Nine Maritime VHF Public Coast Stations					
Call Sign	Licensee Name	Location of Station	VPCSA	Radio Service	Station Class
WAH	Avalon Communications Corp.	Saint Thomas, VI	3	MC	FC

Source: The Commission's Office of Engineering and Technology (OET) conducted this study on August 25, 2004.

Tools: The ULS is at <http://wireless.fcc.gov/uls/> and OET's "US County to FCC Area Cross-Reference Search" tool is at <http://www.fcc.gov/fcc-bin/cesearch.pl>.